

APPEAL NO. 040931  
FILED JUNE 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 31, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to first through eighth quarter supplemental income benefits (SIBs); that the appellant (carrier) is not relieved of liability for the fourth, fifth, sixth, or seventh quarter benefits due to the claimant's failure to timely file the applications; and that the carrier waived the right to contest the claimant's entitlement to fourth quarter benefits by not timely requesting a benefit review conference (BRC). The carrier appealed, disputing the determination that the claimant is entitled to SIBs for the first through eighth quarters and the determination that the carrier waived the right to contest entitlement to fourth quarter benefits by not timely requesting a BRC. The claimant responded, urging affirmance.

DECISION

Affirmed.

The carrier argues that the hearing officer erred in finding that the carrier waived its right to contest the claimant's entitlement to SIBs because the carrier failed to timely request a BRC. The carrier does not dispute that it did not timely file a request for a BRC, which normally would result in it waiving its right to contest entitlement to SIBs. The carrier argues that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(d) (Rule 130.108(d)) relieved it of the obligation to timely dispute entitlement to fourth quarter SIBs because it did not pay SIBs for the third quarter. The carrier contends that the fact that it paid the first month of the fourth quarter in error is not sufficient to trigger Rule 130.108(d) and the rules do not cover this fact situation. However, we held in Texas Workers' Compensation Commission Appeal No. 020302, decided March 26, 2002, that Rule 130.108(e), the applicable provision when the carrier disputes entitlement to a quarter when it did not pay SIBs during the immediately preceding quarter, would not operate to relieve the carrier of its duty to request a BRC where, as here, the issue of entitlement to the prior quarter of SIBs was ongoing at the time the carrier should have requested the BRC. As noted in our recent decision in Texas Workers' Compensation Commission Appeal No. 032868-s, decided December 11, 2003, "[t]he 1989 Act and rules contain no specific provisions relating to the factual situation where the immediately preceding quarter is actively under dispute at the time the carrier receives the [Application for (SIBs) (TWCC-52)] for the subsequent quarter." The hearing officer's determination that the carrier waived the right to contest the claimant's entitlement to fourth quarter benefits by not timely requesting a BRC is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The parties stipulated to the eligibility criteria of a compensable injury, impairment rating, no commutation of impairment income benefits, and that the first

through eighth quarters ran from March 12, 2002, through March 8, 2004, and the qualifying periods for the first through eighth quarters were from November 28, 2001, through November 25, 2003. The carrier appeals both the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) and the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1). The claimant proceeds on a basis that he had a total inability to work in the first through eighth quarter qualifying periods.

Regarding the direct result criterion, the Appeals Panel has long held that the direct result requirement may be met by showing a serious injury with long-lasting effects which precludes a return to the preinjury employment. The hearing officer's determination on this point is supported by the evidence.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The carrier contends that the reports and letters of Dr. W do not state specifically how the compensable injury prevents the claimant from working and contends the hearing officer erred because he looked at a totality of medical records. While the hearing officer did mention various medical records in his discussion of the evidence, the hearing officer made a specific finding that the claimant provided a narrative report from Dr. W explaining how the impairment from the compensable injury prevented the claimant from performing any work in any capacity. There is sufficient evidence in the record to support this finding.

The carrier also contends that the hearing officer erred in his finding that no other records showed that the claimant had an ability to work. In Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002, citing Texas Workers' Compensation Commission Appeal No. 002196, decided October 24, 2000, the Appeals Panel stated that "in cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject those records as not credible without explanation or support in the record." In this case the hearing officer acknowledges that there are other reports in evidence which purport to show that the claimant had an ability to work and specifically explained why he found that the records were not credible. The hearing officer's explanation is supported by the record.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Edward Vilano  
Appeals Judge